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Attorneys for Plaintiff and Counter-Defendant
TRIA BEAUTY, INC.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

TRIA BEAUTY, INC.,

Plaintiff,

v.
RADIANCY, INC.,

Defendant,

RADIANCY, INC.,

Counter-claimant

v.
TRIA BEAUTY, INC.,

Counter-defendant,

and
KIMBERLY KARDASHIAN,

Counter-defendant

Case No. 10-cv-05030-RS (NJV)

DECLARATION OF ALEXANDRA J. ROBERTS ON BEHALF OF TRIA BEAUTY, INC., IN RESPONSE TO RADIANCY INC.'S MOTION FOR ADMINISTRATIVE RELIEF PURSUANT TO CIVIL LOCAL RULES 7-11 AND 79-5 TO FILE CERTAIN MATERIALS UNDER SEAL

Judge: Hon. Richard Seeborg

Hearing Date: May 10, 2012
Time: 1:30 p.m.
Courtroom: 3

1 I, Alexandra J. Roberts, hereby declare and state as follows:

2 1. I am an associate in the law firm of Ropes & Gray LLP, counsel of
3 record for TRIA Beauty, Inc. (“TRIA”) in this litigation. I submit this declaration
4 on behalf of TRIA in response to Radiancy, Inc.’s Motion for Administrative
5 Relief Pursuant to Civil Local Rules 7-11 and 79-5 to File Certain Materials Under
6 Seal (Docket Entry 118) (the “Motion to Seal”).

7 2. The Motion to Seal concerns Exhibits 1, 2, 3, 5, 6, 7-16, 18-21, and
8 27-37 (the “Exhibits”) to the Declaration of Victoria L. Loughery in Support of
9 Defendant-Counterclaim Plaintiff Radiancy, Inc.’s Motion for Partial Summary
10 Judgment (the “Loughery Declaration”) and portions of Radiancy’s Memorandum
11 of Points and Authorities in Support of Radiancy, Inc.’s Motion for Partial
12 Summary Judgment (the “Memorandum”).

13 3. TRIA consents to the public filing of the majority of the Exhibits
14 addressed in the Motion to Seal. Specifically, TRIA consents to the public filing
15 of Exhibits 1-3, 7, 9-11, 16, 19, 20, 22-26, 30-35, and 37. TRIA, however,
16 requests that a subset of the Exhibits addressed in the Motion to Seal be maintained
17 under seal, as follows.

18 4. TRIA requests that Exhibits 6, 8, 13-15, 18, 27-29, and 36, and the
19 last two pages of Exhibit 5 remain under seal because these Exhibits contain highly
20 confidential information concerning TRIA’s regulatory affairs, including TRIA’s
21 internal deliberations and discussions about TRIA’s strategies for obtaining
22 regulatory clearances from the United States Food and Drug Administration
23 (“FDA”) and TRIA’s understanding and interpretation of those clearances and
24 other positions and statements by the FDA. In the course of its regular business,
25 TRIA maintains all such deliberations and discussions in the strictest confidence,
26 as is common in the medical device industry.

27 5. TRIA also requests that Exhibits 12 and 21 remain under seal because
28 these Exhibits contain highly confidential information about TRIA’s marketing and

1 business strategies and plans, including marketing analyses, budgets, and financial
2 data that could result in competitive harm to TRIA if publicly disclosed.

3 6. Finally, TRIA requests that Exhibit 36 remain under seal because it
4 contains highly confidential information about TRIA's product research and
5 development efforts, including planned future product innovations, and thus could
6 result in competitive harm to TRIA if publicly disclosed.

7 7. With regard to Radiancy's Memorandum of Points and Authorities
8 in Support of its Motion for Partial Summary Judgment, TRIA has no objection to
9 the public filing of most of the portions identified in the Motion to Seal. Several of
10 the portions, however, contain quotations from the above-described Exhibits that
11 TRIA wishes to maintain under seal, and TRIA asks that those portions of the
12 Memorandum correspondingly be maintained under seal. Specifically, TRIA
13 requests that the following six brief portions of the Memorandum (identified by
14 page and line) be maintained under seal: 10:4-8, 10:15-18, 10:20-11:11, 15:13-22,
15 15:25-16:6, and 16:25-17:3. To aid the Court, TRIA has attached to this
16 declaration a redacted version of the Memorandum that redacts only those sections
17 that TRIA requests to be maintained under seal.

18 I declare under penalty of perjury under the laws of the United States that
19 the foregoing is true and correct.

20 Executed on April 12, 2012 at Boston, Massachusetts

21
22 /s/ Alexandra J. Roberts
23 Alexandra J. Roberts
24 ROPES & GRAY LLP
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